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## BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: LL-NOTCRO.1/06

ATTY/TYPIST: LL:seg

### HIGHLIGHTED COLOR KEY:

**PINK** = Unchanged Language

**YELLOW** = New Language

**BLUE** = Language where rule drafting  
should be considered

### BRIEF DESCRIPTION:

AN ACT Relating to mortgage brokers and  
loan originators; amending RCW 19.146.005,  
19.146.010, 19.146.020, 19.146.0201,  
19.146.030, 19.146.040, 19.146.060,  
19.146.070, 19.146.200, 19.146.205,  
19.146.210, 19.146.215, 19.146.225,  
19.146.228, 19.146.235, and 19.146.280;

reenacting and amending RCW 19.146.220; adding new sections to chapter 19.146 RCW; creating a new section; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 19.146.005 and 1994 c 33 s 1 are each amended to read as follows:

The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers and loan originators have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of licensure in addition to rules of practice

and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

**Sec. 2.** RCW 19.146.010 and 1997 c 106 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, **controls**, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

~~((3))~~ (4) "Computer loan information systems" or "CLI system" means ~~((the real estate mortgage financing information system defined by rule of the director))~~ a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different

lenders.

~~((4))~~ (5) "Department" means the department of financial institutions.

~~((5))~~ (6) "Designated broker" means a natural person designated ~~((by the applicant for a license or licensee))~~ as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience(, — education,)) and examination requirements set forth in RCW 19.146.210(1)(e). [CC032806: Rules should detail what it means to be designated and how designation occurs.]

~~((6))~~ (7) "Director" means the director of financial institutions.

~~((7))~~ (8) "Employee" means an individual who has an employment relationship ~~((acknowledged by both the employee and the~~

~~licensee))~~ with a mortgage broker, and the individual is treated as an employee by the ~~((licensee))~~ mortgage broker for purposes of compliance with federal income tax laws.

~~((8))~~ (9) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws. [CC032806: Tests are set forth by IRS that can be imported to the rules.]

~~((9))~~ "Investigation" means an examination undertaken for the purpose of detection of violations of this chapter or securing

information lawfully required under this chapter.))

(10) "Loan originator" means a natural person ((employed, either directly or indirectly, or retained as an independent contractor by a person required to be licensed as a mortgage broker, or a natural person who represents a person required to be licensed as a mortgage broker, in the performance of any act specified in subsection (12) of this section)) who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these



activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks. [CC032806: Various words and phrases in this section should be defined for consistent understanding.]

(11) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker

or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower. [CC032806: Confusion exists over agreements between broker and borrower and broker and lender that need clarification. Further, we should clarify how locks work in today's market.]

(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan. [CC032806: Rules

should define "makes" (e.g. table funding) and "assist". Also define "Licensee" and set "mortgage broker" apart as the "company" licensee.]

(13) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(14) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(15) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be

constructed a single family dwelling or multiple family dwelling of four or less units. [CC032806: When will non-owner occupied and second homes be included? DFI has a long-standing working concept that should be considered.]

((~~(15)~~)) (16) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

**Sec. 3.** RCW 19.146.020 and 1997 c 106 s 2 are each amended to read as follows:

(1) Except as provided under subsections

(2) (~~(and (3))~~) through (4) of this section, the following are exempt from all provisions of this chapter:

(a) (i) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, (~~(consumer loan companies,)~~) insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof; and

(ii) Subject to the director's written approval, the exclusive agents of an affiliate of a bank that is wholly owned by

the bank holding company that owns the bank;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act; [CC032806: This section must be consistent with the new CLA rules.]

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

~~((e))~~ (d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

~~((d))~~ (e) Any person making or acquiring

a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

~~((e))~~ (f) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

~~((f))~~ (g) Any mortgage broker approved and subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation;

~~((g))~~ (h) The United States of America, the state of Washington, any other state, and

any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1) ~~((g))~~ (h); and

~~((h))~~ (i) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;



(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1).

(2) Those persons and their loan originators otherwise exempt under subsection (1) (~~((d) or (f))~~) (e), (g), or (4) of this section must comply with RCW 19.146.0201 (~~((and shall be subject to the director's authority to issue a cease and desist order for any violation of RCW 19.146.0201 and shall be subject to the director's authority))~~) through 19.146.080. For

violations of RCW 19.146.0201 through 19.146.080, the director has authority to issue a cease and desist order as provided in RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW 19.146.220, and to obtain and review books and records that are relevant to any allegation of such a violation as provided in RCW 19.146.235. [REDACTED]

(3) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter. [REDACTED]

(a) Upon receipt of a license under this subsection, (~~(such an applicant)~~) the

licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by ~~((RCW 19.146.020))~~ this section may apply to the director for exemption from licensing. The director shall adopt **rules** for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those **rules** and consistent with the other provisions of this chapter.

(4) The director may exempt an exclusive agent under subsection (1) (a) of this section provided that the affiliate in subsection

(1) (a) of this section:

(a) Applies for and maintains a license as provided by subsection (3) of this section;

(b) Has on file with the director a binding written agreement under which the affiliate assumes responsibility for the exclusive agent's violations of this chapter or rules adopted under this chapter; and

(c) Maintains a bond or other security in an amount required by the director that runs to the benefit of the state and any person who suffers loss by reason of the exclusive agent's violation of this chapter or rules adopted under this chapter.

**Sec. 4.** RCW 19.146.0201 and 1997 c 106 s 3 are each amended to read as follows:

It is a violation of this chapter for a loan originator, mortgage broker required to

be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (~~((d) or (f) in connection with a residential mortgage loan)~~) (e), (g), or (4) to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (~~((f) or (g))~~) (g) or (h) or a lender with whom the mortgage broker maintains a written correspondent or loan ~~((brokerage))~~ broker agreement under RCW 19.146.040; [CC032806: Concerns are frequently raised about the availability of advertised products. The rules should clarify how "actually available" will be interpreted.]

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or

deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;  
[CC032806: Appraisers are interested in seeing this section addressed thoroughly in the rules. Note that there is already a

section that may be sufficient.]

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest ~~((or otherwise))~~;

(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226((~~7~~)); the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500((~~, — or~~)); the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12((~~, as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity~~)); Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs.



6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 C.F.R. Part 310, as these acts existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, in any advertising of residential mortgage loans, or any other applicable mortgage broker or loan originator activities covered by the acts. The department may adopt by rule requirements that mortgage brokers and loan originators

comply with other applicable federal statutes and regulations in any advertising of residential mortgage loans, or any other mortgage broker or loan originator activity;

~~((11))~~ (12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service; [CC032806: The rules should provide better guidance to MBs and appraisers on this section.]

~~((12))~~ (13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any

fee prohibited by RCW 19.146.030 or 19.146.070;

~~((13))~~ (14) (a) Except when complying with (b) and (c) of this subsection, ~~((te))~~ act as a ~~((mortgage broker))~~ loan originator in any transaction (i) in which the ~~((mortgage broker))~~ loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage ~~((broker))~~ services to the borrower, ~~((the mortgage broker))~~ a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A (~~LICENSED MORTGAGE BROKER~~) LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE (~~BROKERAGE~~) SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A (~~MORTGAGE BROKER~~) LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson

licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage ~~((brokerage))~~ broker business activities and shall maintain such person's mortgage ~~((brokerage))~~ broker business records separate and apart from the real estate ~~((brokerage))~~ broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the ~~((brokerage))~~ broker business firms results. This subsection ~~((13))~~ (14)(c) shall not require a real estate broker or salesperson

licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage (~~(brokerage)~~) broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

~~((14))~~ (15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

**Sec. 5.** RCW 19.146.030 and 1997 c 106 s 4 are each amended to read as follows:  
[CC032806: Existing interpretive letters and positions should be rolled into rules.]

(1) Within three business days following receipt of a loan application or any moneys from a borrower, a mortgage broker or loan originator on behalf of the mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule.

A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

[CC032806: This last section needs clarification that we are talking about yield spread premiums and that RESPA still holds.]

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan [CC032806: This section needs clarification as it has not been effectively enforced in the past.]; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in



compliance with the requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be

deemed to comply with the disclosure requirements of this subsection; [CC032806: The rules should cover where MB fees should be shown and that MBs cannot charge discount points.]

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies

of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent; [REDACTED]

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and [REDACTED]

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded. [REDACTED]

(3) If subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to

the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker or loan originator shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A mortgage broker or loan originator on behalf of a mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this section, unless (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage broker or loan

originator on behalf of a mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, excluding prepaid escrowed costs of ownership as defined by rule, no other disclosures shall be required by this subsection. [CC032806: Existing tests and triggers for this section should be brought into the rules.]

**Sec. 6.** RCW 19.146.040 and 1994 c 33 s 19 are each amended to read as follows:

(1) Every contract between a mortgage broker, or a loan originator, and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) Any contract under this section entered by a loan originator shall be binding on the mortgage broker. [CC032806: Rules should clarify that the referenced contract is between the LO and the borrower, not any possible contractual relationship.]

(3) A mortgage broker shall have a written correspondent or loan ~~((brokerage))~~ broker agreement with a lender before any solicitation of, or contracting with, the public.

**Sec. 7.** RCW 19.146.050 and 2003 c 53 s

158:

(1) All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in

any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers.

(2) The director shall make rules which:  
(a) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and (b) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower.

(3) Any interest earned on the trust account shall be refunded or credited to the borrowers at closing.



(4) Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are not considered gross receipts taxable under chapter 82.04 RCW.

(5) A person violating this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

**Sec. 8.** RCW 19.146.060 and 1997 c 106 s 6 are each amended to read as follows:

(1) A mortgage broker shall use generally accepted accounting principles.

(2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at ~~((the mortgage broker's usual business))~~ a location available to the

director until at least twenty- five months have elapsed following the effective period to which the books and records relate. [CC032806: It is necessary to clarify what is meant by "available" and "relate" in this section.]

(3) Where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter.

(4) "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by

or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes,

computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan.

**Sec. 9.** RCW 19.146.070 and 1993 c 468 s 13 are each amended to read as follows: (1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and

mortgage broker. A loan originator may not accept a fee, commission, or compensation of any kind from borrowers in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and

Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or [CC032806: Existing rule on this section may need updating.]

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

(3) A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose

other than the payment of bona fide fees to third-party providers. [CC032806: Update trust accounting section of rules for this section.]

**Sec. 10.** RCW 19.146.080 and 1997 c 106 s 7:

Except as otherwise required by the United States Code or the Code of Federal Regulations, now or as amended, if a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report in full, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. Regardless of whether the

borrower has obtained a loan, the mortgage broker must provide the copies or transmit the documents within five days after the borrower has made the request in writing. [CC032806: Significant area of confusion that could benefit from a rule.]

**Sec. 11.** RCW 19.146.100 and 1994 c 33 s 25:

The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW



19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

**Sec. 12.** RCW 19.146.110 and 2003 c 53 s 159:

Any person who violates any provision of this chapter other than RCW 19.146.050 or any rule or order of the director is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [CC032806: Need to interpret that a mistake was made in not changing this section for the new Class B felony under .235.]

**Sec. 13.** RCW 19.146.200 and 1997 c 106 s 8 are each amended to read as follows:

(1) A person, unless specifically exempted from this chapter under RCW 19.146.020, may not engage in the business of a mortgage broker(~~(, except as an employee of a person~~

~~licensed or exempt from licensing,)) or loan~~  
~~originator~~ without first obtaining and  
maintaining a license under this chapter.  
(~~(However, a person who independently~~  
~~contracts with a licensed mortgage broker~~  
~~need not be licensed if the licensed mortgage~~  
~~broker and the independent contractor have on~~  
~~file with the director a binding written~~  
~~agreement under which the licensed mortgage~~  
~~broker assumes responsibility for the~~  
~~independent contractor's violations of any~~  
~~provision of this chapter or rules adopted~~  
~~under this chapter; and if the licensed~~  
~~mortgage broker's bond or other security~~  
~~required under this chapter runs to the~~  
~~benefit of the state and any person who~~  
~~suffers loss by reason of the independent~~  
~~contractor's violation of any provision of~~  
~~this chapter or rules adopted under this~~

chapter.))

(2) A person may not bring a suit or action for the collection of compensation (~~((as a mortgage broker))~~) in connection with a residential mortgage loan unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter. (~~((This subsection does not apply to suits or actions for the collection or compensation for services performed prior to October 31, 1993.))~~) [CC032806: Rules should clarify that this section does not allow Los to bring suits against consumers for unpaid fees. Only licensed mortgage brokers may bring the suit.]

(3) ((The)) A mortgage broker license must be prominently displayed in the mortgage broker's place of business.

(4) Every licensed mortgage broker must at all times have a designated broker responsible for all activities of the mortgage broker in conducting the business of a mortgage broker. A designated broker, principal, or owner who has supervisory authority over a mortgage broker is responsible for a licensee's, employee's, or independent contractor's violations of this chapter and its rules if:

(a) The designated broker, principal, or owner directs or instructs the conduct or, with knowledge of the specific conduct, approves or allows the conduct; or

(b) The designated broker, principal, or owner who has supervisory authority over the

licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known of the conduct, at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial action. [CC032806: Consider rules addressing this area more specifically to provide direction and guidance.]

**Sec. 14.** RCW 19.146.205 and 2001 c 177 s 4 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social

security numbers previously used by the applicant, unless waived by the director; [REDACTED]

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director; [REDACTED]

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director; [REDACTED]

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule. [CC032806: It may be appropriate to identify "the form prescribed by the director" as the CSBS/AARMR model form and national database.]

(2) (~~The director may exchange fingerprint data with the federal bureau of investigation.))~~ As a part of or in connection with an application for any license under this section, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes



nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW. [CC032806: Rules should provide "entity authorized" as the CSBS/AARMR national database project.]

(3) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the financial

services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(4) (a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary

according to the annual average number of loan originators (~~(or independent contractors)~~) of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third

parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate

or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection. [CC032806: Rule should be written incorporating the established DFI Enforcement Unit bond claim procedures.]

(b) Subsection (4) (b) and (c) of this

section applies only to applications received on or before January 1, 2007. Before January 1, 2007, in lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) Before January 1, 2007, in lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under

this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection.

**Sec. 15.** RCW 19.146.210 and 1997 c 106 s 10 are each amended to read as follows:

(1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

(a) The applicant has paid the required

license fees;

(b) The applicant has complied with RCW 19.146.205;

(c) Neither the applicant, any of its principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) Neither the applicant, any of its principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) The designated broker, (i) has at least two years of experience in the residential mortgage loan industry (~~or has completed the educational requirements established by rule~~



~~of the director))~~ and (ii) has passed a written examination whose content shall be established by rule of the director; ((and))

(f) The applicant ((has)), its principals, and the designated broker have demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter; and

(g) Neither the applicant, any of its principals, or the designated broker have been found to be in violation of this chapter or rules. [CC032806: Rules need to clarify the term "found" and establish a period of time relevant to this section. An old "finding" should be at the discretion of the director.]

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a mortgage broker license under this chapter to any licensee issued a license under chapter 468, Laws of 1993, that has a valid license and is otherwise in compliance with the provisions of this chapter.

(4) A license issued pursuant to this ~~((chapter is valid))~~ section expires on the date one year from the date of issuance ~~((with no fixed date of expiration))~~ which,

for license renewal purposes, is also the renewal date. The director shall adopt rules establishing the process for renewal of licenses. [CC032806: It will be necessary to draft the rules to align with the CSBS/AARMR national database project.]

(5) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a license and to facilitate the business of a mortgage broker, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage broker has substantially fulfilled the requirements for licensing as defined by

rule. [CC032806: This section will be used to get all LOs legal by January 2007 and to allow us to merge with the national project.]

**Sec. 16.** RCW 19.146.215 and 1997 c 106 s 11 are each amended to read as follows:

The designated broker of every licensee shall complete an annual continuing education requirement (~~(, which the director shall define by rule)~~). The director shall establish standards in rule for approval of professional organizations offering continuing education to designated brokers. The director may approve continuing education taken by designated brokers in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter. [CC032806: This is one of the first

undertakings for the Licensing Sub-panel. We are also interested in reciprocity between states.]

**Sec. 17.** RCW 19.146.220 and 1997 c 106 s 12 and 1997 c 58 s 879 are each reenacted and amended to read as follows:

(1) The director (~~((shall))~~) may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose (~~((the following sanctions:))~~)

~~—(a) Deny applications for licenses for:~~  
~~(i))~~ finer or order restitution against licensees or other persons subject to this chapter, or deny, suspend, decline to renew, or revoke licenses for:

(a) Violations of orders, including cease and desist orders ~~((issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9)))~~;

~~((Suspend or revoke licenses for: —(i)))~~ False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

~~((—(ii)))~~ (c) Failure to pay a fee required by the director or maintain the required bond;

~~((—(iii)))~~ (d) Failure to comply with any directive ~~((or))~~, order, or subpoena of the director; or

~~((—(iv)))~~ (e) Any violation of ~~((RCW 19.146.050, 19.146.060 (3), 19.146.0201 (1) through (9) or (12), 19.146.205 (4), or~~

~~19.146.265;~~

~~—(e))~~ this chapter.

(3) The director may impose fines on ((the licensee,)) an employee ((or)), loan originator, independent contractor, or agent of the licensee, or other person subject to this chapter for:

~~((i))~~ (a) Any violations of RCW 19.146.0201 (1) through (9) or ((12)) (13), 19.146.030 through 19.146.080, 19.146.200, 19.146.205 (4), or 19.146.265; or

~~((ii))~~ (b) Failure to comply with any directive or order of the director((r)). [CC032806: It is necessary to clarify in the rules what "directive" means.]

~~((d))~~ (4) The director may issue orders directing a licensee, its employee ((or)), loan originator, independent contractor, agent, or other person subject to this

chapter to(~~(i)~~)  
~~(i))~~ cease and desist from conducting  
business ((in a manner that is injurious to  
the public or violates any provision of this  
chapter; or  
~~(ii)~~ Pay restitution to an injured  
borrower; or  
~~(e))~~ ).

(5) The director may issue orders removing  
from office or prohibiting from participation  
in the conduct of the affairs of a licensed  
mortgage broker, or both, any officer,  
principal, employee, or loan originator of  
any licensed mortgage broker or any person  
subject to licensing under this chapter for:

~~((i))~~ (a) Any violation of 19.146.0201  
(1) through (9) or ((12)) (13), 19.146.030  
through 19.146.080, 19.146.200,  
19.146.205(4), or 19.146.265; ((or



~~—(ii))~~ (b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

~~((iii))~~ (c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

~~((iv))~~ (d) Failure to comply with any directive or order of the director.

~~((3))~~ (6) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

~~((4))~~ (7) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions. [CC032806: Not quite sure what this section intends.]

~~((5))~~ (8) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 18.** RCW 19.146.221 and 1994 c 33 s 13:

The director may, at his or her discretion

and as provided for in \*RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

**Sec. 19.** RCW 19.146.223 and 1994 c 33 s 2:

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to

fulfill the intent of the legislature as expressed in RCW 19.146.005.

**Sec. 20.** RCW 19.146.225 and 1994 c 33 s 15 are each amended to read as follows:

In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only after seeking the advice of the mortgage (~~(brokerage)~~) broker commission and (~~(to govern)~~) only for the purpose of governing the activities of licensed mortgage brokers, loan originators, and other persons subject to this chapter.

**Sec. 21.** RCW 19.146.227 and 1994 c 33 s 14:

Whenever the director determines that the public is likely to be substantially injured

by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held, within fourteen days unless otherwise specified in chapter 34.05 RCW, upon request to determine whether the order will become permanent. [REDACTED]

If it appears that a person has engaged in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon proper

showing, injunctive relief or temporary restraining orders shall be granted. The director shall not be required to post a bond in any court proceedings.

**Sec. 22.** RCW 19.146.228 and 2001 c 177 s 5 are each amended to read as follows:

The director shall establish fees by rule in accordance with the policy established in RCW 43.24.086 and fees shall be sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this

chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers and loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker or loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under

this chapter shall be deposited in the consumer services account.

**Sec. 23.** RCW 19.146.230 and 1994 c 33 s 16:

The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec. 24.** RCW 19.146.235 and 1997 c 106 s 14 are each amended to read as follows:

~~((For the purposes of investigating complaints arising under this chapter, the~~



director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The director or designated person may direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct

~~or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and testify, or does not produce the requested books, records, files, or other documents within the time period established in the directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling production of books, records, files, or other documents. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.~~

~~Once during the first two years of licensing, the director may visit, either~~

personally or by designee, the licensee's place or places of business to conduct a compliance examination. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have been prepaid in their license fee. After this one visit within the two year period subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been taken or to

~~investigate a complaint.))~~

The director or a designee has authority to conduct investigations and examinations as provided in this section.

(1) For the purposes of investigating violations or complaints arising under this chapter, the director or his or her designee may make an investigation of the operations of any mortgage broker or loan originator as often as necessary in order to carry out the purposes of this chapter.

(2) Every mortgage broker shall make available to the director or a designee its books and records relating to its operations.

(a) For the purpose of examinations, the director or his or her designee may have access to such books and records during normal business hours and interview the officers, principals, loan originators,

employees, independent contractors, and agents of the licensee concerning their business.

(b) For the purposes of investigating violations or complaints arising under this chapter, the director may at any time, either personally or by a designee, investigate the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person acts or claims to act under, or without the authority of, this chapter.

(c) The director or designated person may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such

examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.

(3) Once during the first five years of licensing, including branch licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct an examination. The scope of the examination is limited to documents and information necessary to determine compliance with this chapter and attendant rules. In general, the examination scope may include:

(a) A review for trust accounting compliance;

(b) Loan file review to determine the mortgage broker's compliance with this

chapter and applicable federal regulations covering the business of mortgage brokering and lending;

(c) Interviews for the purpose of understanding business and solicitation practices, transactional events, disclosure compliance, complaint resolution, or determining specific compliance with this chapter and the attendant rules; and

(d) A review of general business books and records, including employee records, for the purpose of determining specific compliance with this chapter and the attendant rules.

(4) The purpose of an examination is to make certain that licensees are conducting business in compliance with the law. Therefore, protocols for examination findings and corrective action directed from an examination must be established by rule of

the director. To accomplish this purpose, these protocols must include the following:

(a) A reporting mechanism from the director to the licensee;

(b) A process for clear notification of violations and an opportunity for response by the licensee; and

(c) The criteria by which the frequency of examinations will be determined.

(5) If the examination findings clearly identify the need to expand the scope of the examination, the director or a designee, upon five days' written notification to the licensee with an explanation of the need, may:

(a) Expand the examination review to locations other than the examined location regardless of the number of years a location has held a license; or



(b) Expand the time period of the examination beyond the five-year period of licensing, provided the expansion of time does not exceed a date certain identified in the written notification in this subsection.

[CC032806: The foregoing sections requiring rules will be driven largely by the DFI examination manual available to the public.]

(6) The director or a designee may consider reports made by independent certified professionals for the mortgage broker covering the same general subject matter as the examination. The director or a designee may incorporate all or part of the report in the report of the examination. [CC032806:

Again, the DFI examination manual will be a public document that can be used by any independent certified professional to conduct an examination.]

(7) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations. The cost of these services for investigations only must be billed in accordance with RCW 19.146.228.

(8) The director may establish by rule travel costs for examination of out-of-state entities.

(9) (a) No person subject to examination or investigation under this chapter may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(b) A person who commits an act under (a) of this subsection is guilty of a class B

felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than twenty thousand dollars, or both.

**Sec. 25.** RCW 19.146.240 and 1997 c 106 s 15:

(1) The director or any person injured by a violation of this chapter may bring an action against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation. [CC032806: DFI bond claim procedures will be considered for this section of rules.]

(2)(a) The director or any person who is damaged by the licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter, may bring

suit upon the surety bond or approved alternative in the superior court of any county in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the alleged violation of this chapter or rules adopted under this chapter.

Except as provided in subsection (2)(b) of this section, in the event valid claims of borrowers against a bond or deposit exceed the amount of the bond or deposit, each borrower claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of filing of any claim or action. If, after all valid borrower claims are paid, valid claims by nonborrower claimants exceed the remaining

amount of the bond or deposit, each nonborrower claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of the filing or any claim or action. A judgment arising from a violation of this chapter or rule adopted under this chapter shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(b) Borrowers shall be given priority over the director and other persons in distributions in actions against the surety bond. The director and other third parties

shall then be entitled to distribution to the extent of their claims as found valid against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. This provision regarding priority shall not restrict the right of any claimant to file a claim within one year.

(3) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law.

**Sec. 26.** RCW 19.146.245 and 1997 c 106 s 16:

A licensed mortgage broker is liable for any conduct violating this chapter by the

designated broker, a loan originator, or other licensed mortgage broker while employed or engaged by the licensed mortgage broker. [CC032806: This section has caused confusion and could be addressed in rule.]

**Sec. 27.** RCW 19.146.250 and 1997 c 106 s 17:

No license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his or her own name except:

(1) A licensed mortgage broker may operate or advertise under a name other than the one under which the license is issued by obtaining the written consent of the director to do so; and

(2) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the mortgage firm on which either the name of the main or branch offices appears.

**Sec. 28.** RCW 19.146.260 and 2000 c 171 s 74:

Every licensed mortgage broker that does not maintain a physical office within the



state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall not be effective unless the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, no later than the next business day sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director. In any judicial action, suit, or proceeding arising under

this chapter or any rule or order adopted under this chapter between the department or director and a licensed mortgage broker who does not maintain a physical office in this state, venue shall be exclusively in the superior court of Thurston county.

**Sec. 29.** RCW 19.146.265 and 1997 c 106 s 19:

A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. Provided that the applicant is in good standing with the department, as defined in rule by the director, the director shall promptly issue a duplicate license for each of the branch

offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued.

**Sec. 30.** RCW 19.146.280 and 2001 c 177 s 6 are each amended to read as follows:

(1) There is established the mortgage (~~(brokerage)~~) broker commission consisting of (~~(five)~~) seven commission members who shall act in an advisory capacity to the director on mortgage (~~(brokerage)~~) broker issues.

(2) The director shall appoint the members of the commission, weighing the recommendations from professional organizations representing mortgage brokers and loan originators. At least three of the commission members shall be mortgage brokers

licensed under this chapter ~~((and))~~, at least one shall be exempt from licensure under RCW 19.146.020(1) ~~((f))~~ (g), and at least two of the commission members shall be licensed loan originators under this chapter. No commission member shall be appointed who has had less than five years' experience in the business of residential mortgage lending. In addition, the director or a designee shall serve as an ex officio, nonvoting member of the commission. Voting members of the commission shall serve for two-year terms ~~((with three of the initial commission members serving one year terms))~~. The department shall provide staff support to the commission.

(3) The commission may establish a code of conduct for its members. Any commissioner may bring a motion before the commission to

remove a commissioner for failing to conduct themselves in a manner consistent with the code of conduct. The motion shall be in the form of a recommendation to the director to dismiss a specific commissioner and shall enumerate causes for doing so. The commissioner in question shall recuse himself or herself from voting on any such motion. Any such motion must be approved unanimously by the remaining ((four)) six commissioners. Approved motions shall be immediately transmitted to the director for review and action.

(4) Members of the commission shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. All costs and expenses associated with the commission shall be paid from the

financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all costs and expenses shall be paid from the consumer services account.

(5) The commission shall advise the director on the characteristics and needs of the mortgage (~~(brokerage)~~) broker profession.

(6) The department, in consultation with other applicable agencies of state government, shall conduct a continuing review of the number and type of consumer complaints arising from residential mortgage lending in the state. The department shall report its findings to the senate committee on financial institutions and house of representatives committee on financial institutions and insurance along with recommendations for any changes in the licensing requirements of this

chapter, biennially by December 1st of each even-numbered year. [CC032806: Need rules.]

NEW SECTION.     **Sec. 31.**     A new section is added to chapter 19.146 RCW to read as follows:

(1) A licensee shall provide the director with an annual report of mortgage broker activity. The director may by rule create a schedule and format for the annual report. The annual report may only include the following for mortgage broker activities in Washington state:

(a) The total number of closed loans originated by the mortgage broker; and

(b) The total dollar volume of closed loans originated by the mortgage broker.

(2) Any information provided by a mortgage broker in an annual report that constitutes a

trade secret as defined in RCW 19.108.010 is exempt from the disclosure requirements in chapters 42.17 and 42.56 RCW, unless aggregated with information supplied by other mortgage brokers in such a manner that the mortgage broker's individual information is not identifiable. Any information provided by the mortgage broker that allows identification of the mortgage broker may only be used for purposes reasonably related to the regulation of mortgage brokers to ensure compliance with this chapter.

NEW SECTION.     **Sec. 32.**     A new section is added to chapter 19.146 RCW to read as follows:

(1) Application for a loan originator license under this chapter shall be in writing and in the form prescribed by the



director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, the loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any

governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) At the time of filing an application for a license under this chapter, each loan

originator applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund. [CC032806: Discussions during bill drafting ranged from \$100 - \$125 per year. To be determined is fees for more than one license connection with one mortgage broker.]

(4) The director must establish by rule procedures for accepting and processing incomplete applications.

NEW SECTION.     **Sec. 33.**     A new section is added to chapter 19.146 RCW to read as follows:

(1) The director shall issue and deliver a

loan originator license if, after investigation, the director makes the following findings:

(a) The loan originator applicant has paid the required license fees;

(b) The loan originator applicant has met the requirements of section 33 (old section 19 of the bill) of this act;

(c) The loan originator applicant has not had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) The loan originator applicant has

passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated character and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter; and

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as established by rule of the director. The director shall establish standards in rule for approval of professional organizations offering continuing education to loan originators.

The director may approve continuing education taken by loan originators in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter. [CC032806: Same reciprocity issue.]

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when

the director determines that the loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule. [CC032806: Facilitates licensing by 1/01/07.]

NEW SECTION. **Sec. 34.** A new section is added to chapter 19.146 RCW to read as follows:

A loan originator license, or the authority granted under such a license, is not assignable and cannot be transferred, sold, or franchised by contract or any other means. [CC032806: Need to establish license format for relationship with multiple MBs. For example, would a LO hold two licenses, or one license and an endorsement from a second mortgage broker? Two licenses seems to make the most sense.]



NEW SECTION.     **Sec. 35.**     A new section is added to chapter 19.146 RCW to read as follows:

A loan originator may only take an application on behalf of one mortgage broker at a time, and that mortgage broker must be clearly identified on the application.  
[CC032806: Rule needed.]

NEW SECTION.     **Sec. 36.**     The director of the department of financial institutions or the director's designee may take such steps as are necessary to ensure that this act is implemented on the effective date of this section.

NEW SECTION.     **Sec. 37.**     This act takes effect January 1, 2007.